

2013 DRAFTING REQUEST

Bill

Received:	10/8/2012	Received By:	rkite
Wanted:	As time permits	Same as LRB:	
For:	Administration-Budget	By/Representing:	Stinebrink
May Contact:		Drafter:	rkite
Subject:	Buildings/Safety - bldg stndrds Environment - water quality	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**

Requester's email:

Carbon copy (CC) to:

Pre Topic:

DOA:.....Stinebrink, BB0098 -

Topic:

Commercial construction site erosion control

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 10/15/2012			_____			
/P1	rkite 1/15/2013	kfollett 10/18/2012	jmurphy 10/19/2012	_____	srose 10/19/2012		State
/P2	rkite 2/1/2013	kfollett 1/16/2013	jfrantze 1/16/2013	_____	srose 1/16/2013		State
/P3	rkite	kfollett	rschluet	_____	srose		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	2/4/2013	2/1/2013	2/1/2013	_____	2/1/2013		
/1		jdye 2/4/2013	jfrantze 2/4/2013	_____ _____	mbarman 2/4/2013		State

FE Sent For:

<END>

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/P3		kfollett	rschluet		srose		State

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/?	rkite 10/15/2012						
/P1	rkite 1/15/2013	kfollett 10/18/2012	jmurphy 10/19/2012		srose 10/19/2012		State
/P2		kfollett 1/16/2013	jfrantze 1/16/2013		srose 1/16/2013		State

FE Sent For:

1P3/5f
2/1
2/3
JF
<END>

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 Wanted: As time permits Companion to LRB:
 For: Administration-Budget By/Representing: Stinebrink
 May Contact: Drafter: rkite
 Subject: Buildings/Safety - bldg stndrds Addl. Drafters:
 Environment - water quality Extra Copies:

Submit via email: YES
 Requester's email:
 Carbon copy (CC) to:

Pre Topic:

DOA:.....Stinebrink, BB0098 -

Topic:

Commercial construction site erosion control

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rkite 10/15/2012						
/P1		kfollett 10/18/2012	10/19/2012		srose 10/19/2012		State
FE Sent For:							

1P215f
1/1/6
1/1/6
R3
1/1/14
<END>

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By/Representing: **Stinebrink**

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Environment - water quality**

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/?	rkite	1P/KJF 10/18	1P/EJ	Int phl			
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FE Sent For:

<END>

Kite, Robin

From: Hanaman, Cathlene
Sent: Monday, October 08, 2012 8:50 AM
To: Gibson-Glass, Mary; Kite, Robin
Subject: FW: Statutory Language Drafting Request
Attachments: Commercial Construction Site Erosion.pdf

RNK

From: Cory.Stinebrink@Wisconsin.gov [mailto:Cory.Stinebrink@Wisconsin.gov]
Sent: Wednesday, October 03, 2012 4:51 PM
To: Hanaman, Cathlene
Cc: Thornton, Scott - DOA; Wavrunek, Leah J - DOA; Stinebrink, Cory R - DOA
Subject: Statutory Language Drafting Request

Biennial Budget: 2013-15

Topic: Commercial Construction Site Erosion Control Program

Tracking Code: BB0098

SBO Team: AEJ

SBO Analyst: Stinebrink, Cory R - DOA
Phone: (608) 266-1103
E-mail: Cory.Stinebrink@Wisconsin.gov

Agency Acronym: DNR

Agency Number: 370

Priority: Medium

Intent:

See attached

Attachments: True

Please send completed drafts to statlanguage@wisapps.wi.gov

Transfer Commercial Construction Site Erosion Control Program

CS

The Department requests the following statutory changes that would effectively transfer the responsibility for administering erosion control requirements at commercial building construction sites from the Department of Safety and Professional Services (DSPS) back to DNR.

- The repeal of ch. 101.1206, Wis. Stats and all references to it in statute. This will eliminate duplicative efforts between DNR and DSPS to administer erosion control at commercial building sites.
- The repeal of Section 9135 of 2011 Wisconsin Act 32. This section contains language regarding the transfer of commercial construction site erosion control which would not be relevant with the repeal of ch. 101.1206, Wis. Stats.
- Change ch. 101.653(2m) to read; *"The department shall promulgate rules for the administration of construction site erosion control under this subchapter by counties, cities, villages and towns, including provisions regarding the issuance of **building** permits and the collection and distribution of fees."* Adding the word "building" clarifies that local units of government will not be issuing WPDES permits.
- Change ch. 281.33(3)(a)1 to read; *"Except as restricted under subd. 2., the department shall establish by rule minimum standards for activities related to construction site erosion control and to storm water management."* Deleting the words *"where the construction activities do not include the construction of a building"* makes this section applicable to all sites.

Background:

The 2011-2013 biennial budget transferred the responsibility for administering erosion control requirements at commercial building construction sites from the DNR to the newly-created Department of Safety and Professional Services (DSPS). This transfer runs counter to the Environmental Protection Agency's delegation to DNR as the authority for administration of the National Pollutant Discharge Elimination System (NPDES) in Wisconsin. Wisconsin currently administers the delegated NPDES program via the Wisconsin Pollutant Discharge Elimination System (WPDES) program.

In a July 18, 2011 letter to DNR, EPA expressed concern that it had not approved any dividing of permitting authority between multiple agencies. Therefore, in EPA's opinion, only DNR can issue coverage under the WPDES system on behalf of EPA, which means that commercial building construction sites of an acre or more and 1 and 2 family dwelling construction sites that have not received coverage under the WPDES permit from DNR risk being in violation of the Clean Water Act (CWA).

The commercial building erosion control program has frequently been shifted between state agencies over the last 20 years. In the mid-1990s, it was split off from DNR's overall construction site erosion control program and transferred to the Department of Commerce. In 2009, the 2009-11 biennial budget (2009 Act 28) transferred the authority back to DNR. Then, in 2011, the 2011-13 biennial budget (2011 Act 32) transferred the authority back to the Department of Commerce, which later became DSPS.

EPA has taken the position in a letter to DNR dated July 18, 2011 that all construction sites where an acre or more of land disturbing construction activity takes place must be permitted by DNR as their delegated authority. Even if DSPS performs the plan review and inspection activities for which they have been given authority by the state, WPDES permit coverage will still need to be obtained from DNR for commercial building construction projects as required by EPA.

Rationale for Request:

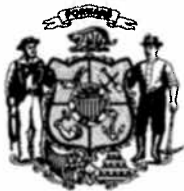
1. DNR can administer the regulation of erosion control at commercial building sites in a more efficient, cost-effective, and streamlined manner.

- Since it has already successfully absorbed the commercial building sites into its existing stormwater program, DNR has the expertise, organization, and administrative capability to implement the program for commercial building sites. By contrast, DSPS has not yet taken over administration of erosion control at commercial building sites and does not have the infrastructure to implement the program.
- DNR has developed an electronic notice of intent (NOI) which allows for the efficient collection of data and issuance of permits statewide under a single system. This is a more streamlined application process that will provide for better communication with applicants on the status of their applications and DNR review, and it enables DNR staff to spend more time on compliance. On the other hand, splitting jurisdiction requires resources from two different agencies to collect similar information using duplicate but different systems that are incapable of communicating with each other.
- When the program has been split among two agencies, considerable staff resources have been used to ensure compliance with the CWA and the DNR permit that could otherwise have been spent on efforts to optimize a single, efficient program.
- Splitting erosion control responsibilities requires DSPS to:
 - Hire staff/reassign staff
 - Develop rules
 - Address the issue of not having authority for storm water management
 - Develop an MOU with DNR that is acceptable to EPA
 - Provide training to staff and the regulated community
 - Establish a means of communication with DNR
 - Develop an equivalent program and request review and concurrence from DNR

2. DNR administration of the erosion control regulations at commercial building site provides for greater consistency, uniform customer service, and reduced confusion.

- When Commerce had commercial building sites, there was an ongoing and fundamental issue of fairness in the construction industry. Landowners and consultants involved with projects regulated by the DNR were aware that they were being held to standards that owners of commercial building sites were not held to.
- When commercial building sites were previously handled by Commerce, there was considerable confusion among the regulated industry, particularly consultants, about which agency regulated which sites and what the requirements were. It was not uncommon for both agencies to have jurisdiction over the same site depending on construction sequencing. DNR staff believes that this confusion will return under the current split agency arrangement.
- The general public has often been confused over who has jurisdiction when trying to register complaints on apparent erosion control violations, which has led to valuable staff time being allocated toward tracking down jurisdictional responsibilities.

3. The DNR's mission and expertise enables it to better manage erosion control at commercial building sites in accordance with the Clean Water Act (CWA) and EPA requirements.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-022679
RNK: [signature]

Rm [unclear]

P1

DOA:.....Stinebrink, BB0098 – Commercial construction site erosion control

FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION

In 10/15
JWF
Jan 10/18

D-Note

Don't Gen

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

WATER QUALITY

Under current law both DSPS and DNR administer laws with regard to erosion control at building sites. DSPS is required to establish standards for erosion control at building sites for the construction of public buildings and buildings that are places of employment (commercial buildings) as well as for the construction of one- and (2) family dwellings. DNR is required to establish standards for erosion control at sites where the construction activities do not include the construction of a building (nonbuilding sites), such as sites involving street or bridge construction.

Under current law, DSPS may delegate authority with regard to erosion control at building sites for the construction of commercial buildings to a county, city, village, or town. Current law requires DNR to prepare a model zoning ordinance for erosion control at nonbuilding sites and to distribute the model ordinance to any city, village, town, or county that submits a request.

This bill eliminates DSPS's authority to establish standards and administer the laws with regard to erosion control at commercial building sites. The bill gives DNR the responsibility to establish standards and to administer the laws with regard to erosion control at all construction sites, other than sites for the construction of a one- and (2) family dwelling.

family

family

SP

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 30.443 (1) (a) of the statutes is amended to read:

2 30.443 (1) (a) Promulgate rules establishing standards for erosion prevention
3 or control at sites in the riverway that are not subject to the standards established
4 under s. ~~101.1206 (1)~~ or 101.653 (2) and that have a natural slope of 20% or less.

History: 1995 a. 211; 2009 a. 28; 2011 a. 32.

5 **SECTION 2.** 30.443 (1) (b) of the statutes is amended to read:

6 30.443 (1) (b) Promulgate rules establishing standards for erosion prevention
7 or control that are in addition to standards established under ss. ~~101.1206 (1)~~ and
8 s. 101.653 (2) for sites in the riverway that are subject to those standards and that
9 have a natural slope of 12% or more but 20% or less.

History: 1995 a. 211; 2009 a. 28; 2011 a. 32.

10 **SECTION 3.** 30.443 (2) of the statutes is amended to read:

11 30.443 (2) The board may impose any of the applicable standards established
12 under sub. (1) (a) or (b) or ss. ~~101.1206 (1)~~ or s. 101.653 (2) as a condition for receiving
13 a permit under s. 30.44 (1), and the board may promulgate rules to enforce these
14 standards in the riverway.

History: 1995 a. 211; 2009 a. 28; 2011 a. 32.

15 **SECTION 4.** 59.69 (4c) of the statutes is repealed.

16 **SECTION 5.** 59.693 (2) of the statutes is amended to read:

17 59.693 (2) **AUTHORITY TO ENACT ORDINANCE.** To effect the purposes of s. 281.33
18 and to promote the public health, safety and general welfare, a county may enact a
19 zoning ordinance, that is applicable to all of its unincorporated area, except as
20 provided in s. 60.627 (2) (b), for construction site erosion control at sites where the

no strike

1 ~~construction activities do not include the construction of a building~~ and for storm
2 water management. This ordinance may be enacted separately from ordinances
3 enacted under s. 59.69.

History: 1983 a. 416; 1983 a. 538 s. 271; 1989 a. 31, 324; 1993 a. 16, 246; 1995 a. 201 s. 478; Stats. 1995 s. 59.693.; 1995 a. 227; 1997 a. 35; 1999 a. 150 s. 672.

4 **SECTION 6. 59.693 (7) of the statutes is amended to read:**

5 **59.693 (7) APPLICABILITY OF LOCAL SUBDIVISION REGULATION.** All powers granted
6 to a county under s. 236.45 may be exercised by the county with respect to
7 construction site erosion control ~~at sites where the construction activities do not~~
8 ~~include the construction of a building~~ or with respect to storm water management
9 regulation, if the county has or provides a county planning agency as defined in s.
10 236.02 (1).

History: 1983 a. 416; 1983 a. 538 s. 271; 1989 a. 31, 324; 1993 a. 16, 246; 1995 a. 201 s. 478; Stats. 1995 s. 59.693.; 1995 a. 227; 1997 a. 35; 1999 a. 150 s. 672.

11 **SECTION 7. 60.627 (2) (a) of the statutes is amended to read:**

12 **60.627 (2) (a)** To effect the purposes of s. 281.33 and to promote the public
13 health, safety and general welfare, if a town board may enact zoning ordinances
14 under s. 60.62, the town board may enact a zoning ordinance, that is applicable to
15 all of its area, for construction site erosion control ~~at sites where the construction~~
16 ~~activities do not include the construction of a building~~ and for storm water
17 management. This ordinance may be enacted separately from ordinances enacted
18 under s. 60.62.

History: 1993 a. 246; 1995 a. 201, 227; 1999 a. 150 s. 672.

19 **SECTION 8. 60.627 (4) (c) of the statutes is amended to read:**

20 **60.627 (4) (c)** An ordinance enacted under this section supersedes all provisions
21 of an ordinance enacted under s. 60.62 that relate to construction site erosion control
22 ~~at sites where the construction activities do not include the construction of a building~~
23 or to storm water management regulation.

History: 1993 a. 246; 1995 a. 201, 227; 1999 a. 150 s. 672.

1 **SECTION 9.** 60.627 (6) of the statutes is amended to read: ✓

2 **60.627 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION.** All powers granted
3 to a town under s. 236.45 may be exercised by it with respect to construction site
4 erosion control ~~at sites where the construction activities do not include the~~
5 ~~construction of a building~~ or with respect to storm water management regulation, if
6 the town has or provides a planning commission or agency.

History: 1993 a. 246; 1995 a. 201, 227; 1999 a. 150 s. 672.

7 **SECTION 10.** 61.354 (2) of the statutes is amended to read: ✓

8 **61.354 (2) AUTHORITY TO ENACT ORDINANCE.** To effect the purposes of s. 281.33
9 and to promote the public health, safety and general welfare, a village may enact a
10 zoning ordinance, that is applicable to all of its incorporated area, for construction
11 site erosion control ~~at sites where the construction activities do not include the~~
12 ~~construction of a building~~ and for storm water management. This ordinance may be
13 enacted separately from ordinances enacted under s. 61.35.

History: 1983 a. 416; 1983 a. 538 s. 271; 1989 a. 31, 324; 1993 a. 16; 1995 a. 227; 1999 a. 150 s. 672.

14 **SECTION 11.** 61.354 (4) (c) of the statutes is amended to read: ✓

15 **61.354 (4) (c)** An ordinance enacted under this section supersedes all provisions
16 of an ordinance enacted under s. 61.35 that relate to construction site erosion control
17 ~~at sites where the construction activities do not include the construction of a building~~
18 or to storm water management regulation.

History: 1983 a. 416; 1983 a. 538 s. 271; 1989 a. 31, 324; 1993 a. 16; 1995 a. 227; 1999 a. 150 s. 672.

19 **SECTION 12.** 61.354 (6) of the statutes is amended to read: ✓

20 **61.354 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION.** All powers granted
21 to a village under s. 236.45 may be exercised by it with respect to construction site
22 erosion control ~~at sites where the construction activities do not include the~~

1 ~~construction of a building~~ or with respect to storm water management regulation, if
2 the village has or provides a planning commission or agency.

3 History: 1983 a. 416; 1983 a. 538 s. 271; 1989 a. 31, 324; 1993 a. 16; 1995 a. 227; 1999 a. 150 s. 672. ✓

3 **SECTION 13.** 62.234 (2) of the statutes is amended to read:

4 **62.234 (2) AUTHORITY TO ENACT ORDINANCE.** To effect the purposes of s. 281.33
5 and to promote the public health, safety and general welfare, a city may enact a
6 zoning ordinance, that is applicable to all of its incorporated area, for construction
7 site erosion control ~~at sites where the construction activities do not include the~~
8 ~~construction of a building~~ and for storm water management. This ordinance may be
9 enacted separately from ordinances enacted under s. 62.23.

10 History: 1983 a. 416; 1983 a. 538 s. 271; 1989 a. 31, 324; 1993 a. 16; 1995 a. 227; 1999 a. 150 s. 672. ✓

10 **SECTION 14.** 62.234 (4) (c) of the statutes is amended to read:

11 **62.234 (4) (c)** An ordinance enacted under this section supersedes all provisions
12 of an ordinance enacted under s. 62.23 that relate to construction site erosion control
13 ~~at sites where the construction activities do not include the construction of a building~~
14 or to storm water management regulation.

15 History: 1983 a. 416; 1983 a. 538 s. 271; 1989 a. 31, 324; 1993 a. 16; 1995 a. 227; 1999 a. 150 s. 672. ✓

15 **SECTION 15.** 62.234 (6) of the statutes is amended to read:

16 **62.234 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION.** All powers granted
17 to a city under s. 236.45 may be exercised by it with respect to construction site
18 erosion control ~~at sites where the construction activities do not include the~~
19 ~~construction of a building~~ or with respect to storm water management regulation, if
20 the city has or provides a planning commission or agency.

21 History: 1983 a. 416; 1983 a. 538 s. 271; 1989 a. 31, 324; 1993 a. 16; 1995 a. 227; 1999 a. 150 s. 672. ✓

21 **SECTION 16.** 92.07 (15) of the statutes is amended to read:

22 **92.07 (15) ADMINISTRATION AND ENFORCEMENT OF ORDINANCES.** A land
23 conservation committee may, if authorized by the county board, administer and

1 enforce those provisions of an ordinance enacted under s. 101.65 (1) (a) related to
2 construction site erosion, or a zoning ordinance enacted under s. 59.693 ~~or an~~
3 ~~ordinance enacted under authority granted under s. 101.1206.~~

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1991 a. 309; 1993 a. 16; 1995 a. 201; 1997 a. 27; 1999 a. 9; 2009 a. 28; 2011 a. 32.

4 **SECTION 17.** 101.653 (2m) of the statutes is amended to read:

5 101.653 (2m) RULES FOR ADMINISTRATION. The department shall promulgate
6 rules for the administration of construction site erosion control under this
7 subchapter by counties, cities, villages and towns, including provisions regarding the
8 issuance of building permits and the collection and distribution of fees.

History: 1991 a. 309.

9 **SECTION 18.** 281.33 (3) (a) 1. of the statutes is amended to read:

10 281.33 (3) (a) 1. Except as restricted under subd. 2., the department shall
11 establish by rule minimum standards for activities related to construction site
12 erosion control ~~at sites where the construction activities do not include the~~
13 ~~construction of a building~~ and to storm water management.

History: 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 936 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32.

14 **SECTION 19.** 281.33 (4) of the statutes is amended to read:

15 281.33 (4) MODEL ORDINANCES; STATE PLAN; DISTRIBUTION. The department shall
16 prepare a model zoning ordinance for construction site erosion control ~~at sites where~~
17 ~~the construction activities do not include the construction of a building~~ and for storm
18 water management in the form of an administrative rule. The model ordinance is
19 subject to s. 227.19 and other provisions of ch. 227 in the same manner as other
20 administrative rules. Following the promulgation of the model ordinance as a rule,
21 the department shall distribute a copy of the model ordinance to any city, village,

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- 1 town or county that submits a request. The department shall distribute a copy of the
- 2 state plan to any agency which submits a request.

History: 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32.

3

(END)

D-Note

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0226/P1ins.
RNK:.....

INSERT 6-13

1 **SECTION 1.** 281.33 (3) (b) (intro.) of the statutes is amended to read:
2 281.33 **(3)** (b) (intro.) The minimum standards for construction site erosion
3 control ~~at sites where the construction activities do not include the construction of~~
4 a building shall provide for the regulation of any construction activity, at such a site,
5 that:

History: 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

PI
LRB-0226/dn
RNK: *gf*

Date

Cory Stinebrink:

This draft transfers from DSPS[✓] to DNR the authority to administer the laws with regard to erosion control at commercial building sites. The draft is silent on the issue of whether any delegation to a county, city, village, or town under s. 101.1206 (4) will remain in effect after the transfer. Also, the draft does not specify what happens with regard to any rules promulgated by DSPS under s. 101.1206 (7). Finally, if there is a pending matter before DSPS, should that matter be transferred to DNR? Please let me know how such a delegation, a rule, or a pending matter should be treated after the transfer. The final draft should contain language to clarify these issues and should obviate the need to "repeal" nonstatutory language in 2011 Act 32 as instructed.

If you have any questions about this draft, please feel free to contact me.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0226/P1dn
RNK:kjf:jm

October 18, 2012

Cory Stinebrink:

This draft transfers from DSPS to DNR the authority to administer the laws with regard to erosion control at commercial building sites. The draft is silent on the issue of whether any delegation to a county, city, village, or town under s. 101.1206 (4) will remain in effect after the transfer. Also, the draft does not specify what happens with regard to any rules promulgated by DSPS under s. 101.1206 (7). Finally, if there is a pending matter before DSPS, should that matter be transferred to DNR? Please let me know how such a delegation, a rule, or a pending matter should be treated after the transfer. The final draft should contain language to clarify these issues and should obviate the need to "repeal" nonstatutory language in 2011 Act 32 as instructed.

If you have any questions about this draft, please feel free to contact me.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Kite, Robin

From: Stinebrink, Cory R - DOA <Cory.Stinebrink@wisconsin.gov>
Sent: Tuesday, January 08, 2013 5:16 PM
To: Kite, Robin
Subject: BB0098 - Draft # 0226

Robin-

We need a re-draft of the transfer of commercial construction site erosion. We've been talking this out with DNR, and I think we have what we need to get a new draft. So, here are the elements we are looking for:

- Department of Safety and Professional Services would retain responsibility for all 1 and 2 family home construction sites and sites that are less than 1 acre.
- DNR would have responsibility for all sites over 1 acre.
- DNR also needs explicit language that makes it clear that DNR is the permitting authority under 283.33. This is required by the EPA. The department suggested the following language:
 - 283.33(1)(ct) A discharge of storm water that requires a permit under the federal pollution control act, 33 USC 1251 to 1387, or federal regulations promulgated under the act.
- DNR also wants to make sure that any local delegation for standards enforcement are maintained, especially as it pertains to DSPS authority under 101.1206.

Cory Stinebrink
Executive Policy and Budget Analyst
State Budget Office
(608)266-1103

Kite, Robin

From: Stinebrink, Cory R - DOA <Cory.Stinebrink@wisconsin.gov>
Sent: Wednesday, January 09, 2013 12:39 PM
To: Kite, Robin
Subject: FW: contacts for drafting atty.

Robin-

Here is the response I got from DNR on who is best to talk to about the site erosion item on permitting language, or any other questions you may have.

Thanks,
Cory

From: Neumann, Paul F - DNR
Sent: Wednesday, January 09, 2013 12:33 PM
To: Stinebrink, Cory R - DOA
Subject: contacts for drafting atty.

Cory,

I would have the drafting attorney contact either Mary Anne Lowndes at 1-6420 or Jim Bertolacini at 4-8971 if he/she has some questions about the draft language.

Thanks,
Paul

Kite, Robin

From: Lowndes, MaryAnne - DNR <MaryAnne.Lowndes@wisconsin.gov>
Sent: Wednesday, January 09, 2013 4:45 PM
To: Kite, Robin
Subject: JKB 283 1-9-2012.docx
Attachments: JKB 283 1-9-2012.docx

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

1/9/13

Called and spoke to Mary Ann Lowner @
DNR - 261-6420

She explained that the law is not clear enough to express the idea that DNR must issue permits under 5 283.33 for construction activities relating to acreage as required under local law (currently one acre or more)

She explained that under sub(1)(a), the phrase "including construction" appears to modify "industrial activity"

She wants the language about construction to be separate from "industrial activity"

✓ suggested changing the language in sub. (1)(a) so that it says:
"industrial activity or construction"

she will call me back on this issue

1/14 -

Told Cory I don't know what provisions under 10.1206 that DNR wants for its program -

Cory said to leave out for now

Also - need more info to know what changes need to be made in local gov

Chapters re: ordinance authority etc 6-0818

Cory told me to call Paul Neumann @ DNR to have him put me in touch w/ someone at DNR who can answer this question

1/9/13

Per Mary Ann Sawndes @ DNR -

She is sending suggested language -
the language is intended to "supersede"
DNR's own rules - this is needed
to satisfy the fed. govt.

283.33 Storm water discharge permits.

(1) REQUIREMENT. An owner or operator shall obtain a permit under this section for any of the following:

(a) A discharge from a discernible, confined and discrete conveyance of storm water associated with an industrial activity, ~~including construction, that meets criteria in rules promulgated by the department.~~

(am) A discharge from a discernible, confined and discrete conveyance of storm water associated with a construction site, including sites where the construction activities include the construction of a building.

(b) A discharge of storm water from a municipal separate storm sewer system serving an incorporated area with a population of 100,000 or more, as determined by the 1990 federal census.

(c) A discharge of storm water from a municipal separate storm sewer system serving an area located in an urbanized area, as determined by the U.S. bureau of the census based on the latest decennial federal census.

(cg) A discharge of storm water from a municipal separate storm sewer system serving an area with a population of 10,000 or more and a population density of 1,000 or more per square mile, if the system is designated by the department to be regulated under this section based on an evaluation of whether the storm water discharge results in, or has the potential to result in, water quality standards being exceeded, including impairment of designated uses, or in other significant water quality impacts, including habitat and biological impacts.

(cr) A discharge of storm water from a municipal separate storm sewer system that is designated by the department to be regulated under this section because the system contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer system that is regulated under this section.

(d) A discharge of storm water from a facility or activity, other than a facility or activity under pars. (a) to (cr), if the department determines that the discharge either contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the state.

(2) MUNICIPAL SEPARATE STORM SEWER SYSTEMS; APPLICATIONS. The owner or operator of a portion of a municipal separate storm sewer system for which a permit is required under sub. (1) shall do one of the following:

(a) Submit a permit application for its portion of the municipal separate storm sewer system.

(b) Submit a permit application jointly with one or more other owners or operators of the municipal separate storm sewer system.

(c) Authorize a regional authority with control over discharges to a separate storm sewer system that serves areas in more than one municipality to submit an application for a permit that covers the owner's or operator's portion of the municipal separate storm sewer system and other portions of the system if all of the following apply:

1. The regional authority, together with the owners or operators, has authority over a storm water management program that will be in operation by the deadline established by the department.

2. The regional authority or the owners or operators demonstrate their ability to supply all of the required application information by the deadlines established by the department.

3. Each of the owners or operators of a portion of the system covered by the application provides the information required by the department.

(3) MUNICIPAL SEPARATE STORM SEWER SYSTEMS; PERMITS.

(a) The department may issue one permit for all discharges from a municipal separate storm sewer system for which a permit is required under sub. (1) or may issue separate permits for each municipality served by the system, for each type of discharge from the system, for individual discharges from the system or for other categories specified by the department.

(b) If the department issues more than one permit for discharges from a municipal separate storm sewer system, the permits may specify differing requirements.

(c) In a permit for part or all of a municipal separate storm sewer system, the department may specify differing conditions relating to different discharges covered by the permit, including differing management programs for the various drainage areas that contribute storm water to the system.

(4) DISCHARGES THROUGH MUNICIPAL SEPARATE STORM SEWER SYSTEMS.

(a) In addition to obtaining a permit under this section, the owner or operator of an ~~industrial~~ activity described in sub. (1) (a) or (am) that discharges storm water through a municipal separate storm sewer system described in sub. (1) (b) to (cr) shall submit the following information to the owner or operator of the municipal separate storm sewer system:

1. The name of the facility from which the release occurs.
2. The name and address of a person to contact for information about the discharge.
3. The location of the discharge.
4. A description of the principal products or services provided by the facility and the number of any permit covering the facility.

(b)

1. If a person required to provide information under par. (a) is releasing storm water into the municipal separate storm sewer system before the system is subject to sub. (1), the person shall provide the information no later than 60 days after the system becomes subject to sub. (1).

2. If a person required to provide information under par. (a) is not releasing storm water into the municipal separate storm sewer system before the system is subject to sub. (1), the person shall provide the information no later than 180 days before beginning to release storm water into the system.

(5) OTHER DISCHARGERS. A person who is required to obtain a permit under sub. (1) (a), (am) or (d) may apply for an individual permit or request coverage under a general permit issued by the department under s. 283.35.

(6) OTHER COVERAGE.

(a) A municipal separate storm sewer system that is combined with a sanitary sewer system is not required to be covered by a permit under this section but is required to be covered by a permit under s. 283.31.

(b) The department may include coverage of a storm water discharge in a permit issued under s. 283.31. For the purposes of this chapter, the portion of a permit issued under s. 283.31 that covers a storm water discharge is considered a permit issued under this section.

(7) PETITIONS. The owner or operator of a municipal separate storm sewer system may petition the department to require a permit under this section for any discharge through the municipal separate storm sewer system. The department may approve the petition only if a permit for the discharge is required under sub. (1) (a), (am) or (d).

(7m) ISSUANCE. The department shall base the priority for the initial issuance of permits under this section on the relative impact of the discharges on water quality.

(8) RULE MAKING. The department shall promulgate rules for the administration of this section. The department may not require a permit under this section for diffused surface drainage or agricultural storm water discharges.

(9) STORM WATER FEES.

(a) The department shall promulgate rules setting all of the following:

1. A storm water construction permit fee to be paid by any person who applies for a permit under this section for the discharge of storm water from a construction site.
2. A storm water permit annual fee that is to be paid upon issuance of the permit and annually thereafter by a person who holds a permit under this section for the discharge of storm water, other than for the discharge of storm water from a construction site.

(b) The department shall establish the amount of the fee under par. (a) for permits for construction sites, other industrial permits and municipal separate storm sewer permits based on the costs associated with each type of permit.

(bm) The annual fees under par. (a) are due on June 30 annually, beginning with 1994.

(c) All moneys collected under par. (a) shall be credited to the appropriation under s. 20.370 (4) (bj).

History: 1993 a. 16; 1995 a. 227 s. 852, 858; Stats. 1995 s. 283.33; 1997 a. 27; 2001 a. 16.

Cross-reference: See s. NR 216.41, Wis. adm. code.

Kite, Robin

From: Stinebrink, Cory R - DOA <Cory.Stinebrink@wisconsin.gov>
Sent: Monday, January 14, 2013 10:10 AM
To: Kite, Robin
Subject: RE: Erosion control draft, BB0098

Sounds good. I look forward to seeing the new draft. At least as much as one can look forward to bill drafts :)

-----Original Message-----

From: Kite, Robin [mailto:Robin.Kite@legis.wisconsin.gov]
Sent: Monday, January 14, 2013 10:07 AM
To: Stinebrink, Cory R - DOA
Subject: RE: Erosion control draft, BB0098

Thanks, Cory. So it looks like DNR will have authority over all sites that are over one acre and all sites of an acre or less that do not involve the construction of a building. DSPS will have authority over all sites of an acre or less and that involve the construction of a building. This will make the draft much less complicated. I may have more questions, but I will proceed with drafting based on this assumption for now.

Robin

-----Original Message-----

From: Stinebrink, Cory R - DOA [mailto:Cory.Stinebrink@wisconsin.gov]
Sent: Saturday, January 12, 2013 11:09 PM
To: Kite, Robin
Subject: RE: Erosion control draft, BB0098

OK, sorry for the confusion. I don't believe anything is intended to be transferred to DSPS. DNR (I would presume) would maintain authority over lands on which there are no buildings. This is a DNR initiated request, and while DSPS is not opposed to having the transfer made to DNR, I don't believe there has ever been any discussion of them receiving oversight of anything. Does this make things much simpler then?

From: Kite, Robin [Robin.Kite@legis.wisconsin.gov]
Sent: Friday, January 11, 2013 5:04 PM
To: Stinebrink, Cory R - DOA
Subject: RE: Erosion control draft, BB0098

Cory:

After reviewing the changes you requested in your email, I want to make sure that certain issues have been fully considered because these changes will involve complicated drafting:

1. DSPS does not have authority under current law with regard to its building and safety functions to conduct activities on land on which there are no buildings. That is, DSPS is authorized to administer laws concerning commercial buildings, one and two family dwellings, and manufactured homes. If DSPS will be responsible for erosion control laws for construction sites on which there are no buildings, this will be outside the scope of the functions that DSPS currently performs under ch. 101. DSPS's responsibility under ch. 101 is generally to ensure that buildings are safe.

2. If DSPS will administer erosion control laws on sites that are less than one acre in area, then the draft will involve two transfers of agency responsibilities, not one. The draft will have to transfer DNR's current authority over these sites on which there are no buildings to DSPS and also transfer DSPS's current authority over sites that involve the construction of a building on a site that is larger than one acre in area to DNR. This is complicated given the fact that there are 3 different erosion control statutes under current law.

3. The law with regard to erosion control under ss. 101.1206 (commercial buildings) and 101.653 (one and two family dwellings) are different from each other as well as being different than the law under s. 281.33 (3) (sites where there are no buildings). If the transfer of functions as described in item 2 above occurs, will each agency have 3 different laws depending on the size of the construction site - one for erosion control for commercial buildings similar to s. 101.1206; another for erosion control for one and two family dwellings similar to 101.653; and another for erosion control for sites where there is no building similar to 281.33 (3)? Perhaps your changes outlined below address this issue but I am having difficulty understanding how all of these statutes will apply once the necessary transfer of functions is accomplished.

I recognize that you are still making some decisions about this draft but given the complexity, I wanted to alert you to these issues before I get too far into the process of redrafting. If you have any questions, feel free to give me a call.

Robin

From: Stinebrink, Cory R - DOA [mailto:Cory.Stinebrink@wisconsin.gov]
Sent: Friday, January 11, 2013 11:10 AM
To: Kite, Robin
Subject: RE: Erosion control draft, BB0098

Met with DNR again today. Here is what changes would be needed at the moment:

- * All sites that are 1 acre or more, DNR is in charge. That would include 1 and 2 family homes greater than 1 acre.
- * All sites that are less than 1 acre, DSPS is in charge.
- * Expand the model ordinance language to commercial sites.
- * Remove the requirement that model ordinances be promulgated under rule. Evidently there is some separate process that DNR might be introducing soon that would be sufficient for a model ordinance.
- * Have language similar to 101.1206 in place for DNR's portion of the program.
- * In 101.1206, add something that says, for example, "Except for construction sites required to obtain a permit from the department of natural resources under s. 283.33" or something to that effect to specify that it only applies to the less than 1 acre.
- * Also, in 101.1206 and in whatever section would apply to DNR, amend language to specify performance standards, rather than just standards.
- * As I mentioned before, the department would like the explicit

language to appease EPA on permitting. So, language like this as proposed by DNR: "283.33(1)(ct) A discharge of storm water that requires a permit under the federal pollution control act, 33 USC 1251 to 1387, or federal regulations promulgated under the act. "

There are several options on the table with this. Local delegation for standards enforcement are maintained for DSPS and DNR portions of the program. But one option that is being considered is whether to set the performance standards and establish a model ordinance and restrict the local units of government to which are delegated enforcement from enforcing any standard more stringent than the state performance standards.

From: Kite, Robin [mailto:Robin.Kite@legis.wisconsin.gov]
Sent: Thursday, January 10, 2013 5:26 PM
To: Stinebrink, Cory R - DOA
Subject: RE: Erosion control draft, BB0098

Great. I will wait to hear from you.

From: Stinebrink, Cory R - DOA [mailto:Cory.Stinebrink@wisconsin.gov]
Sent: Thursday, January 10, 2013 5:26 PM
To: Kite, Robin
Subject: RE: Erosion control draft, BB0098

OK, it sounds as if I am meeting with DNR and policy staff from the Governor's office on Monday again to go through this and possibly get more direction on it. If you can wait on this until then, I'll have a lot more detail for you and definitely some confirmation on it.

From: Kite, Robin [mailto:Robin.Kite@legis.wisconsin.gov]
Sent: Thursday, January 10, 2013 5:14 PM
To: Stinebrink, Cory R - DOA
Subject: RE: Erosion control draft, BB0098

Thanks.

From: Stinebrink, Cory R - DOA [mailto:Cory.Stinebrink@wisconsin.gov]
Sent: Thursday, January 10, 2013 5:11 PM
To: Kite, Robin
Subject: RE: Erosion control draft, BB0098

I am trying to confirm this with DNR so I don't tell you the wrong thing, but my initial thought is that appears to be how I'd interpret it.

From: Kite, Robin [mailto:Robin.Kite@legis.wisconsin.gov]
Sent: Thursday, January 10, 2013 5:08 PM
To: Stinebrink, Cory R - DOA
Subject: Erosion control draft, BB0098

Cory:

I have a follow up question about this draft. I had asked you if DNR was going to be responsible for erosion control for building sites over one acre and DSPS for building sites of one acre or less. However, if the construction site is less than an acre, but the construction will not involve a building, I would assume that DNR should be responsible for this small site since DSPS does not currently have any authority to administer erosion control laws if there is no building involved.

So would it work this way?

1. Over one acre, regardless of whether there is a building, DNR is in charge.
2. One acre or less and involving the construction of a building, DSPS is in charge.
3. One acre or less and involving no construction of a building, DNR is in charge.

Your thoughts?

Robin

Robin N. Kite
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 E. Main St., Suite 200
Madison, WI 53703
(608) 266-7291